IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 1572 of 2005(K)

OS.394/1998 of I ADDL.SUB COURT,TRIVANDRUM

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PETITIONER:

N.SARAMMA, D/O. NESAMMA,
SHYNI NIVAS, B.P. NAGAR, PINNANKONAM, PEYAD,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.SANJAY
SRI.A.PARVATHI MENON

RESPONDENTS:

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1. BABU T.T., S/O. THANKAYYAN NADAR,
RESIDING AT S.N.J. MANDIRAM, NIRMALA BHAVAN,
NEAR CO-OPERATIVE BANK, KARAKULAM P.O.,
THIRUVANANTHAPURAM.

2. NIRMALA BABU, W/O. BABU T.T.,
RESIDING AT S.N.J. MANDIRAM, NIRMALA BHAVAN,
NEAR CO-OPERATIVE BANK, KARAKULAM P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.BLAZE K.JOSE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 1572/2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE I.A. 273/01 IN O.S. 394/98 BEFORE THE 1ST ADDL. SUBORDINATE JUDGE, TRIVANDRUM DATED 17.1.2001

EXT.P2: COPY OF THE ORDER IN IA 273/01 & IA 3392/03 IN OS 394/98 OF THE 1ST ADDL. SUB JUDGE, TRIVANDRUM DATED 4.6.2004.

EXT.P3: COPY OF the I.A. 3243/04 IN OS 394/98 OF THE 1ST ADDL. SUBORDINATE JUDGE, TRIVANDRUM DATED 30.7.2004.

EXT.P4: COPY OF THE ORDER IN I.A. NO. 3243/04 IN O.S. NO. 394/98 OF THE 1ST ADDL. SUB JUDGE TRIVANDRUM DATED 18.11.2004.

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 1572 of 2005

Dated this the 14th day of June , 2007

JUDGMENT

The plaintiff petitioner in a suit, which was originally for specific performance of a contract for sale of property, is aggrieved by Ext.P4 order by which the trial court dismissed the application for reviewing Ext.P2 order by which the petitioner's application for amendment of the plaint was dismissed.

2. I have heard Smt.Parvathi Menon, the learned counsel for the petitioner and Sri. Blaze K.Jose the learned counsel for the respondents. The main thrust in the arguments of the learned counsel for the respondents defendants was that granting the amendment application would have caused serious legal prejudice to them in as much as the amendment will enable the plaintiff petitioner to get over the bar of limitation which had already in as against the relief for money decree sought to be incorporated as per the amendment. The suit was filed on the

basis of an agreement for sale for specific performance. But as a matter of fact, on the reverse side of the agreement itself there was an endorsement under the signature of the parties that agreement stood cancelled and that plaintiff was to be paid a particular amount in full and final settlement of his claims on a particular day. The above aspect, it appears, was not noticed even by the counsel for the plaintiff while filing the suit. Smt.Parvathi Menon submits that there has been change of vakalath and the above aspect could be noticed only after the new counsel was engaged. The learned Munsiff was not very much impressed by the explanation and dismissed the amendment application by Ext.P2. The Review Petition was dismissed mainly on the reason that the facts did not come within the contours of Order 47 Rule 1.

3. Change in the character and nature of the suit will not a reason for denying the amendment. All amendments which do not cause prejudice to the opposite side resulting in denial of justice or failure of justice ought to be allowed. If the proposed amendment enables the plaintiff petitioner to get over the bar of limitation, such amendment is not to be allowed since the

same will cause prejudice to the respondents. The question that arises for consideration in this case is whether the amendment sought to be incorporated will enable the petitioner to get over the bar of limitation. My attention was drawn to the decision of the Supreme Court in In **Ragu Thilak D.John v. S.Rayappan And others (2001) 2 Supreme Court Cases 472)** which lays down that in such a situation the question of limitation can be made an issue after allowing the amendment and court can be directed to take a decision on that issue. In **Sampath Kumar v. Ayyakannu And Another (2002) 7 Supreme Court Cases 559)** and also in the judgment of this court in **Subramanian v. Aboobacker Koya (2003 (3) KLT 819)** it is ruled that ultimately the rule is that amendment once allowed will relate back to the date of the suit. But the question whether doctrine of relation back in the context of amendment of pleadings is not one of universal application and it is for the court which allows amendment to clarify whether doctrine of relation back will apply to the given suit.

4. Having regard to the rival submissions addressed before me and having considered ratio emerging from the decisions

cited at the bar, I am of the view that in this case the amendment application filed by the petitioner ought to have been allowed by the learned Sub Judge and the respondents should have been permitted to raise question of limitation. But I noticed that there was inordinate delay on the part of the petitioner in seeking amendment and explanation for not seeking amendment earlier does not appear to be convincing to me also. Therefore, I am inclined to allow the amendment application only on terms.

5. The question whether amendment will relate back or not is also left open to be decided by the trial court. The trial court will permit the petitioner respondent to file written statement and if it is seen that question of limitation arises issue should be raised regarding limitation. The court will decide that issue along with the other issues and while deciding the issue of limitation, it will be open to the court to decide whether the amendment allowed by this court will relate back to the date of suit itself. In view of the above question, the writ petition will stand allowed issuing the following directions:

Ext.P2 and P4 are set aside and I.A. 273/2001 will stand allowed on condition that the petitioner pays total cost of

Rs.1,500/- (Rupees One Thousand Five Hundred) within three weeks from today. Out of the cost a sum of Rs.1,000/- will be payable to the respondent either directly or through their counsel in this court and Rs.500/= will be payable to the High Court Legal Service Committee. If the payment is not made within the stipulated time, I.A. will stand dismissed and Ext.P4 order impugned in this writ petition will stand confirmed. Once the order allowing the I.A. become operative on payment of cost, The court below, will allow the respondents to file additional written statement raising all contentions. If it is contended that the suit is barred by limitation and that amendment will not relate back, issues should be raised by the learned Munsiff on those contentions and those issues will also be decided by the learned Munsiff along with the other issues.

The writ petition is allowed subject to the above directions.

PIUS C. KURIAKOSE,
JUDGE.

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